

**REMARKS**

***Pending Claims***

The present application simply continues the prosecution Application No. 09/371,510. Accordingly, claims 1-41 have been cancelled and replaced by the present claims 42-63. Claims 42-62 correspond to claims 42, 43, 45, 48-50, 53-59, 64, 65 and 68-70 previously pending in the parent application. Claim 63 is newly added for examination.

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***Amendment of Specification to Follow***

The specification of the parent application contains numerous editorial amendments. Applicants will provide a supplemental preliminary amendment providing these amendments in conformity with the new rules of practice.

***Sequence Listing***

Applicants provide attached hereto a copy of the printed Sequence Listing, first filed on September 17, 1996, in Application No. 07/920,281 that began the present lineage. Pursuant to 37 C.F.R. § 1.821(e), the USPTO is respectfully requested to make use of the CRF filed on September 17, 1996, corresponding to this paper copy of the Sequence Listing. Applicants submit that the CRF filed on September 17, 1996 in the founding Application No. 07/920,281 is

identical to the printed copy of the sequence listing attached hereto. Applicants will make the amendments to the specification to conform the specification to the requirements under 37 C.F.R. § 1.821-1.825 in a Supplemental Preliminary Amendment to follow.

**Double Patenting Rejection**

FOOTNOTES  
09/01/06-07/10/04

Claims 42, 45, 48-50, 53-56, 64-65 and 71-72 of the parent application stand rejected under the judicially-created doctrine of obviousness-type double patenting over claims 13, 18, 24, 33, 37, 39 and 40-43 of U.S. Patent 5,739,026. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested. In particular, Applicants request that the Examiner re-draw the rejection to limit the basis of the rejection to claims 24, 33, 37, 39 and 40-43 of the '026 patent.

Applicants note that the subject matter of the present application is helper cells, methods of using them and products from the cells. Claims 24, 33, 37, 39 and 40-43 of the '026 patent are all directed to cells harboring variously-described helper vectors. On the other hand, claims 13 and 18 of the '026 patent are directed to cells harboring a vector for expressing a desired gene (a "replicon" vector in the terms of the present application). Applicants submit that, whether or not the presently-claimed invention is obvious in view of claims 24, 33, 37, 39 and 40-43 to

cells harboring helper vectors of the '026 application, it is not obvious in view of cells harboring a replicon vector as it is described in claims 13 and 18 of the '026 patent. Applicants also note the Examiner's reasoning that:

...the helper cells claimed in the '026 patent are designed to provide the necessary packaging functions ... missing from the alphavirus vector and the cells are used to produce the infectious alphavirus vectors when said vectors are introduced into said cells. (Emphasis added.)

The Examiner reasons that the helper cell claims of the '026 patent are the basis for the rejection. Claims 13 and 18 of the '026 patent are not directed to such helper cells. Accordingly, the present rejection for obviousness-type double patenting should be re-drawn to be based only upon claims 24, 33, 37, 39 and 40-43 of the '026 patent.

Favorable action on the merits of the application is respectfully requested.

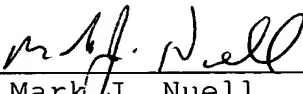
If there are any minor matters precluding allowance of the application which may be resolved by a telephone discussion, the Examiner is respectfully requested to contact Mark J. Nuell, Ph.D. (Reg. No. 36,623) at (703) 205-8000.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees

required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of  
time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By   
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Attachments:

Mark-up Version Showing Changes  
Printed Sequence Listing

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**MARK-UP VERSION SHOWING CHANGES**

***In the Abstract of the Disclosure:***

The following Abstract of the Disclosure was added to the application:

**--Abstract of the Disclosure**

The disclosure describes recombinant alphavirus RNA molecules and expression of heterologous proteins therefrom in animal cells. Recombinant alphaviruses of the present invention, when made to express an antigenic protein, can be administered as vaccines.--

***In the Claims:***

Claims 1-41 were cancelled. New claims 42-63 were added.

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